



Asa Hutchinson
Governor

ARKANSAS TOBACCO CONTROL



Steve Goode
Director

BOARD MEETING MINUTES MAY 5, 2016

The Arkansas Tobacco Control Board met on Thursday, May 5th, 2016 for its monthly meeting in the Main Street Mall Building, located at 101 E. Capitol Avenue, Little Rock, Arkansas, beginning at 10:00 a.m. in Suite 119. There were 6 Board members present. Those attending were Dr. Shabbir Dharamsey, Ms. Carol Dyer, Dr. J.J. Lacey Jr., Dr. Brad Mayfield, Mr. Jay Hickey and Steve Lightle.

Chairman Steve Lightle began the meeting with a "Welcome" to those attending. He then introduced Mr. Greg Kirkpatrick serving as the Hearing Officer and Mrs. Jana Perry serving as Court Reporter. Mr. Lightle then proceeded with the meeting.

Mr. Lightle asked for a motion to approve the board meeting minutes from April 7, 2016.

A motion was made to approve the consent order and was passed with 6 yes votes and 2 absent.

The default list dated April 7, 2016 was presented and read aloud by Attorney Roland Darrow.

A motion was made to approve the consent order and was passed with 6 yes votes and 2 absent.

The Hearing Officer then opened the Disciplinary Hearings and asked Attorney Roland Darrow, to present the following.

CONSENT ORDERS

**IN RE: STEVE DAVIS dba
PIT STOP #8
LITTLE ROCK, ARKANSAS
PERMIT NO. 05272-01**

CASE NO. 2016-125

On March 16, 2016, Respondents' clerk sold a tobacco product to a minor for a second time within forty-eight months, in violation of A.C.A. § 5-27-227(a)(1).

The respondents shall be fined \$250.00 as a civil penalty and all employees of Pit Stop #8 in Little Rock, Arkansas must attend an ATC Merchant Education Training class within six (6) months of the date of this Order.

The board shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order, and that Respondents' failure to comply with any provision herein shall constitute a violation of a Board's Order for which the Board may impose additional disciplinary action.

A motion was made to approve the consent order and was passed with 6 yes votes and 2 absent.

FULL HEARING

**IN RE: LAMARK HOBBS and
HOBBS TURNROW LIQUOR
ARKANSAS CITY, AR**

CASE NO. 2016-0073

On December 30, 2015, an investigation was performed on said business and during the course of said investigation, it was discovered that respondents were selling on a suspended permit.

It was determined by the board to suspend the hearing as a result of Mr. Hobbs not being able to pay his fines from a previous violation and take care of the fines for this new violation. It was also noted that the board wanted to make sure that Mr. Hobbs had proper counsel and representation so that he could completely understand the board's final ruling on his case. The motion was presented by Mr. Hickey and all board members agreed.

The motion passed with 6 yes votes and 2 absent.

On December 10, 2015, an investigation was performed on said business and during the course of said investigation, tobacco products with unpaid taxes were found on the store premises. The respondents were found to have purchased tobacco products from unlicensed dealer and also failed to maintain invoices for all tobacco product on premises as required by law.

Chairman Steve Lightle addressed Attorney Roland Darrow and asked for him to call his first witness. Mr. Darrow called Investigator/Auditor Maurice Gilmore to the stand. Mr. Gilmore addressed the board and gave a brief testimony. He stated that he was in the area doing inspections and chose Mr. Sam's store to do an inspection on. He went into the store and saw tobacco product on the shelves that he did not feel the store owner could account for on an inventory list. He wrote down the names of the products on the shelves and went out to his car to do further investigating. Upon further investigating he found that the said store had purchased their tobacco product from an unlicensed wholesaler. He also stated that Mr. Bassam told him that he had moved tobacco product from one store to the other store he owned and did not keep inventory of that transfer. Mr. Gilmore also wanted to make note to the board that on both store locations tobacco permit applications, it was not marked that there was any inventory in the business at the time of purchase. Mr. Lightle asked Mr. Gilmore if he had any further testimony to present and he said no.

Mr. Lightle then address the defendant, Mr. Bassam Aljubari, and explained that it was his time to give the board testimony. Mr. Bassam addressed the board and said that he in no way was he contesting the fact that he had product in his store that he thought came from a licensed wholesaler. He stated that all of that was the responsibility of his accountant to take care of. He also stated that he was not aware that his accountant did not mark on his applications that he had inventory nor was he made aware that he needed to keep inventory lists of the tobacco product that he buys and moves in between his stores.

Mr. Greg Kirkpatrick asked both Mr. Bassam and Mr. Gilmore if they had anything else they would like to state before the matter went into deliberation. Mr. Bassam stated that he would sign a document and be under the watch of the Arkansas Tobacco Control to make sure that he is doing everything he should if the board would lessen the fine and suspension. Mr. Gilmore had nothing else to add in closing.

Before a motion was passed Mr. Lightle asked for Mr. Christi Harper to do a roll call. All 6 were present and accounted for with 2 absent.

After much deliberation among the board members, a suggestion was made by Dr. Dharamsey and a final motion was put on the table for board deliberation. A motion was made to fine the respondents \$9,187.00 with half of that being paid

on the spot and the other half being held in suspension upon not receiving another fine within 2 years. For the suspension same as follows, that half the suspension be served, 10 days and the other half, 15 days, be held in suspension upon not receiving any further violations within 2 years' time.

The motion passed with 6 yes votes and 2 absent.

LENIENCY HEARING OR BOARD MANDATED HEARINGS

**IN RE: AKBER H. ALI and
ASA CONWAY INC. DBA HOGAN TOBACCO
CONWAY, AR**

CASE NO. 2016-0043

On December 23, 2015, a compliance check was performed on said business and during the course of said compliance check, a tobacco product was sold to a minor.

Chairman Steve Lightle addressed Attorney Roland Darrow and asked for him to call his first witness. Mr. Darrow called Agent Charlie Beall to the stand. Mr. Beall addressed the board and gave a brief testimony. He stated that he was returning back to this location for a re-check due to a violation that accrued last year. With him was his undercover minor. He then instructed his minor to go inside and attempt to purchase tobacco product. That is when Attorney Darrow address the board and stated that Mr. Beall had video of the minor purchasing tobacco product from the store in question. Mr. Beall confirmed this and so the video footage was played for the board and the audience. Once the video concluded, Mr. Beall addressed the board and told them that after his minor came back out with the product that he/she has just purchased, he then went inside and address the owner and identified himself as being an agent with Arkansas Tobacco Control. He stated to the owner that his clerk had just sold to a minor and issued him a citation. Mr. Lightle asked Mr. Beall if he had any further testimony to present and he said no.

Then Mr. Lightle addressed Attorney Roland Darrow for a second time and asked for him to call his second witness. Mr. Darrow called Training Coordinator Mandy Miller to the stand. Mrs. Miller address the board and gave a brief testimony. She stated that she had sent the store owner 3 notices of upcoming trainings that would be held in or near them and their store. She stated that out of those 3 training sessions neither the store owner nor any of his employees attended. She did state that in the days leading up to the hearing that she had been in contact with Mr. Ali and that he is signed up to attend her Little Rock training session that is coming up. Mr. Lightle asked Mrs. Miller if she had any further testimony to present and she said no.

Mr. Lightle then address the defendant, Mr. Akber Ali, and explained that it was his time to give testimony. Mr. Ali addressed the board and said that he in no way was contesting the fact that one of his store clerks sold to a minor and

completed the transaction. He was there to let them know of all the actions and steps that have been taken and are being taken to keep this from happening. He stated that they received a good news letter from Arkansas Tobacco Control explain how well they are doing. He also mentioned his other stores and the fact that they are doing very well at those locations as well. He did come out and state that no changed have been made in how they handle ID checks for minors since their last violation for the store. He stated that how they card and check for minors is as follows: If you look older than 25 then they do not card you. If you look younger than 25 then they will card you. He said they do not have their POS system set up to scan the Id's and has only verbally explained to his cashiers when they start work their hoe to check or card for minors. He said that he will, upon getting back to the store, check the POS system and have it set to scan the ID cards and show his cashiers how to use it.

Mr. Lightle asked Mr. Ali if he had anything else he would like to state before the matter went into deliberation. Mr. Ali stated again that they were not there to contest what had happened but to ask the board for leniency on the suspension and thanked the board for hearing their case.

Before a motions was passed Mr. Lightle asked for Mr. Christi Harper to do a roll call. All 6 were present and accounted for with 2 absent.

A motion was made to fine the respondents \$1,000.00 with a 7 day suspension. \$500 is due now with a 3 day suspension and suspending the other \$500 and 4 days if they do not receive any further violations within 3 years.

The motion passed with 6 yes votes and 2 absent.

IN RE: RAHIM JUMA and

CASE NO. 2016-0013

**HONEYWELLLLLL ENTERPRISES LLC. DBA STRIP FOOD MART
MCCRORY, AR**

On January 26, 2016, an investigation was performed on said business and during the course of said investigation, cigarettes and other tobacco products with unpaid taxes were found both on the store premises and in respondents home. Respondents were also found to have failed to maintain invoices for all tobacco products in their possession as required by law.

It was discovered before the respondents were called to the stand that they were in possession of documents that had not been presented to the Arkansas Tobacco Control staff prior to the meeting as requested. They stated that they had just found the requested invoices that they were not able to provide the agent at the time of the investigation. As a result, neither the board nor the Arkansas Tobacco Control staff felt it would be wise to continue on with a hearing when the newly presented documents had not yet been reviewed and approved. A motion was made at that time to suspend the hearing until next month to allow

Arkansas Tobacco Control the time needed to review and approve the new documents that were presented by the respondents in this case.

The motion passed with 6 yes votes and 2 absent.

Deputy Director Sled gave a brief update on the Enforcement division activities and compliance check rates. He stated that the violation rate for April is much lower than the previous month. He also stated that 5635 compliance checks have been done for the fiscal year which comes to a close June 30, 2016. He mentioned the busy schedule for Mandy Miller and the training course for this month and he also gave a brief that they were given the go ahead to move forward with the office construction.

Deputy Director Larry Owens gave a brief update on the activities in the FDA Division and said that they have completed 2093 compliance checks for their division for the year which was above the normal rate. He said they are doing great and he is proud of his team and staff for all their hard work.

Attorney Roland Darrow addressed the board and let them know that there was a court appearance with Turnrow Liquor and their attempted appeal was dismissed.

ADJOURNMENT

In closing, Mr. Lightle announced the next Board Meeting will be June 2, 2016, and then the meeting was adjourned.

Minutes prepared by

May 13, 2016

Christi Harper

Christi Harper